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No. 85-1054

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

UNITED TRANSPORTATION UNION, *et al.*,
Petitioners,

v.

MISSOURI PACIFIC RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
AND INTERSTATE COMMERCE COMMISSION,
Respondents.

On Petition for a Writ of Certiorari Before Judgment to the United States Court of Appeals for the Eighth Circuit

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MEMORANDUM OF RESPONDENT MISSOURI PACIFIC RAILROAD COMPANY IN RESPONSE TO PETITION

JAMES V. DOLAN
PAUL A. CONLEY, JR.
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

CHARLES A. MILLER
GREGG H. LEVY*
Covington & Burling
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000

NINA K. WUESTLING
Missouri Pacific Railroad Company
210 N. 13th Street
St. Louis, MO 63103

Counsel for Respondent
Missouri Pacific Railroad Company

January 1986

*Counsel of Record

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Respondent Missouri Pacific Railroad Company ("MPRR"), plaintiff in the District Court proceeding below, submits this memorandum in response to the petition for certiorari before judgment filed by the United Transportation Union ("UTU") and its various officials.[1]

[1] The listing required for Missouri Pacific Railroad Company by Rule 28.1 appears in Appendix A to this memorandum.

The UTU's extraordinary petition recognizes that the fundamental issue presented by the District Court's decision, involving the relationship between the Railway Labor Act and the Interstate Commerce Act, has been presented directly for this Court's review in several pending petitions. See Nos. 85-792, 85-793, 85-983, 85-997. All of the parties in the proceeding below—the railroads, the union and the ICC—support those petitions to review the decision of the United States Court of Appeals for the District of Columbia Circuit in *Brotherhood of Locomotive Engineers* v. *ICC*, 761 F.2d 714 (D.C. Cir. 1985) ("*BLE*").

In its current petition, the UTU seeks certiorari to resolve before judgment several issues ancillary to those presented for review in *BLE*. Those issues are raised in a decision of the United States District Court for the Eastern District of Missouri; the UTU's appeal of that decision, argued over one year ago, is awaiting disposition by the United States Court of Appeals for the Eighth Circuit. *Missouri Pacific Railroad Company* v. *UTU*, 580 F. Supp. 1490 (E.D. Mo. 1984), *app. pending*, No. 84-1465 (8th Cir.).

The UTU asks that its current petition be granted only if this Court decides to review the D.C. Circuit decision in *BLE*. See Pet. 3, 24. Therefore, the ancillary questions presented by the UTU's current petition—and an evaluation of whether those questions are "of such imperative public importance as to justify the deviation from normal appellate practice and to require immediate settlement in this Court" (Rule 18)—are not yet ripe for this Court's consideration.

Accordingly, while MPRR submits that UTU has not established in its petition that the ancillary questions presented satisfy this Court's traditional criteria for review or the much more demanding prerequisites for certiorari before judgment, we respectfully request that this Court defer consideration of the UTU's current petition until it has determined whether to grant the petitions in No. 85-792 and the related dockets. If this Court determines to grant one or more of those petitions, we respectfully request that we be afforded thirty days to submit a full response to the UTU's current petition. If this Court declines to review the D.C. Circuit Court's decision in *BLE,* the UTU's current petition should be dismissed.

Respectfully submitted,

JAMES V. DOLAN
PAUL A. CONLEY, JR.
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

CHARLES A. MILLER
GREGG H. LEVY*
Covington & Burling
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
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(202) 662-6000

NINA K. WUESTLING
Missouri Pacific Railroad Company
210 N. 13th Street
St. Louis, MO 63103

Counsel for Respondent
Missouri Pacific Railroad Company

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*Counsel of Record

APPENDIX

Set forth below, pursuant to Rule 28.1, is a list of all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of Respondent Missouri Pacific Railroad Company:

The Alton & Southern Railway Company
Arkansas & Memphis Railway Bridge and Terminal Company
The Belt Railway Company of Chicago
Brownsville & Matamoros Bridge Company
Chicago and Western Indiana Railroad Company
The Denver Union Terminal Railway Company
Galveston, Houston and Henderson Railroad Company
Great Southwest Railroad, Inc.
Houston Belt & Terminal Railway Company
Jefferson Southwestern Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
The St. Joseph and Grand Island Railway Company
St. Joseph Terminal Railroad Company
Southern Illinois and Missouri Bridge Company
Terminal Industrial Land Company
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
Trailer Train Company
Union Pacific Corporation